

*D Contd*  
total weight of the composition,

(b) as the sole surfactant of said composition, at least one non-ionic surface-active agent, in a ratio of 1/20 to 1/5 with respect to the associative non-crosslinked copolymer but in a proportion of less than 1% by weight with respect to the total weight of the composition, and  
(c) at least one insoluble conditioning agent selected from the group consisting of a silicone, a hydrocarbon, a fatty alcohol and a fatty ester, said conditioning agent being present in a proportion of 0.01 to 20% by weight with respect to the total weight of the composition.

REMARKS

Reconsideration is requested.

Claim 15 has been amended to indicate that the claimed composition contains, as the sole surfactant, at least one a non-ionic surface-active agent which is present in the indicated amount. Moreover, claim 19 has been canceled, without prejudice, to be consistent with claim 15. No new matter has been added. The amendments are submitted to advance prosecution and place the claims in condition for allowance.

Entry of the above amendments is requested.

The Examiner's comment in the Advisory Action of May 7, 2002, that the previous similar amendment to claim 15, in the Amendment of April 23, 2002, required further search and consideration is not understood as the applicants have consistently submitted remarks indicating that the non-ionic surfactant was the sole surfactant in the claimed composition (see, page 7 of the Amendment of August 8, 2001 and page 6 of the Amendment of April 23, 2002). Moreover, original claim 1 recited the presence of a non-ionic surfactant, which must have been the subject of the Examiner's original

search and consideration. Accordingly, the above amendments, as well as the amendments of April 23, 2002, should not require any further search and/or consideration. Entry of the above amendments is requested.

The following comments from the un-entered Amendment of April 23, 2002, are included herewith for completeness and in view of the applicants previous request for clarification, a response to which was not provided in the Advisory Action of May 7, 2002.

The Section 112, first paragraph, rejection of claims 15-28 is traversed. The Examiner indicates that the specification fails to describe the limitation of claim 15 of non-crosslinked acrylic copolymer having a C<sub>8</sub>-C<sub>32</sub> hydrophobic chain however the Examiner is requested to see, for example, the paragraph spanning pages 2-3 of the originally filed application. **The Examiner's reference to hydrophobic chains having a C<sub>23</sub>-C<sub>32</sub> chain length is not understood and clarification is requested in the event the rejection is maintained.** In view of the disclosure spanning pages 2-3 of the specification however, withdrawal of the Section 112, first paragraph, rejection is requested.

To the extent not obviated by the above, the Section 102 rejection of claims 15-28 over Amalric (U.S. Patent No. 5,670,471) is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments.

As a preliminary remark, the applicant disagrees with statements made by the Examiner (at page 2, last paragraph) which are contrary to applicants' disclosure.

Specifically, after noting that the specification describes the scope of nonionic surfactants in pages 4, lines 16-37, the Examiner adds that accordingly, any alcohols, alkylphenols, ..., can act as a suitable nonionic surfactant. The Examiner has however misinterpreted the sentence of page 4, lines 16-37 which recites "alcohols, alpha-diols, alkylphenols or fatty acids, **these being polyethoxylated, polypropoxylated or polyglycerolated...**". It is clear that the phrase "these being polyethoxylated..." refers not only to fatty acids, but also to alcohols, alpha-diols and alkylphenols as can be shown by the following examples.

Alcohols include lower alkanols and fatty alcohols. Clearly, methanol and ethanol are not surfactants. Turning to fatty alcohols, these are classified in the instant specification as *conditioning agents*, not as surfactants, see page 1, lines 10-12 and page 6, lines 16-18. Similarly, it would be contrary to the common knowledge to consider diols such as ethyleneglycol and propyleneglycol as surfactants. Moreover, the applicants claim a composition wherein the nonionic surfactant is present in an amount of less than 1 %. Were alcohols to be included in the class of nonionic surfactants, then the surfactant content of the illustrating examples would be: 2.1 % for example 1, and 20.2 % for example 2. In other words, examples 1 and 2 would not illustrate the invention in that they would disclose a composition with more than 1 % of nonionic surfactant and without a conditioning agent, which is however a compulsory component of the claimed composition.

It is thus the applicants' conclusion that the Examiner's position is clearly erroneous, since, contrary to the common knowledge and contrary to the applicants'

disclosure, and that the passage of page 4, lines 16-37 should be interpreted as indicated above, any other interpretation would be appreciated by one of ordinary skill to be unreasonable.

Claim 15 recites a composition containing a nonionic surfactant which is present as *sole surfactant* in an amount of less than 1 % with respect to the total weight of the composition.

Amalric discloses (paragraph bridging column 1-2) a concentrate comprising:

- 60-90 % of a mixture of C<sub>8</sub>-C<sub>15</sub>-alkyl-glycosides (formula I) and C<sub>16</sub>-C<sub>22</sub>-alkylglycosides (formula II);
- 10-40 % of at least one C<sub>8</sub>-C<sub>22</sub> fatty alcohol.

Amalric further discloses (column 4, lines 37-40) a composition containing:

- 2-15 % of said concentrate
- 2-50 % of at least one surfactant
- 0.5-15 % of an oil, and
- water.

In view of the content of the concentrate as outlined above, it can be easily calculated that said composition contains:

- 1.2-13.5 % of alkylglycosides
- 0.2-6 % of C<sub>16</sub>-C<sub>22</sub> fatty alcohols
- 2-50 % of at least one (added) surfactant
- 0.5-15 % of an oil, and
- water.

The added surfactant may be amphoteric, nonionic, cationic and, *preferably*, *anionic* (paragraph bridging columns 3-4). The nonionic surfactant may be an alkylglycoside of formula I and II (column 4, lines 9-10). But when an alkylglycoside is used as a surfactant, it is incorporated to the composition as an additional product, distinct from the alkylglycosides of the concentrate: see Examples 7 and 8, wherein ORAMIX NS 10 is an alkylglucoside nonionic surfactant made of decylpolyglucoside (column 5, line 56) which is present in amounts of 5 % and 2 %, respectively, in addition to "APG" (which is the concentrate of Example 2; see column 9, lines 23-24), which itself contains alkylglycosides.

Accordingly, the actual content of surfactant of the composition defined generically by Amalric is at least 2 % (added surfactant) + at least 1.2 % (alkylglycosides from the concentrate), i.e. an amount of at least  $2 + 1.2 = 3.2$  % of surfactant.

Thus, Amalric's composition does not encompass the composition of the present application, which contains less than 1 % of a nonionic surfactant which, moreover, is used as *sole surfactant*.

It results from the above that clearly, and irrespective of the other components which may be present in Amalric's composition, the composition disclosed at column 4, lines 37-40 of Amalric does not anticipate the composition of the presently claimed invention, containing less than 1 % of nonionic surfactant as sole surfactant.

Amalric also discloses the use of the concentrate to prepare fluid emulsions; see column 4, lines 44-49. The claimed composition is a gel, i.e. a semi-solid composition other than an emulsion, and is thus different from the fluid emulsions of Amalric.

Moreover, the fluid emulsion contains from 1 to 15 % by weight of the concentrate (column 4, lines 63-64). Accordingly, the fluid emulsion contains at least 0.6 % of surfactant (alkylglycosides) from the concentrate and at least 2 % of added surfactant (column 4, lines 38-39), i.e. a total of at least 2.6 % of surfactants.

Here again, and irrespective of the other components which may be present in Amalric's fluid emulsion, Amalric cannot anticipate a composition containing less than 1 % of nonionic surfactant as sole surfactant, as presently claimed.

Withdrawal of the Section 102 rejection of claims 15-28 over Amalric is requested.

To the extent not obviated by the above, the Section 103 rejection of claims 15-28 over Guerrero (U.S. Patent No. 5,236,710) in view of Amalric is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments.

Guerrero discloses a cosmetic composition comprising, in a pharmaceutically acceptable vehicle, a copolymer having hydrophobic chains, and 0.01-30 % by weight (optimally about 5-10 % by weight) of a surfactant which is an anionic sulfosuccinate; see column 2, lines 1-14; column 3, lines 53-54. The anionic sulfosuccinate may be a silicone surfactant agent, as noted by the Examiner, but such an anionic surfactant is not comparable to the silicone products which may be used in the instant composition.

Advantageously, the composition of Guerrero further contains an amphoteric surfactant (column 4, lines 16-17). The composition may also contain emollients such as stearyl alcohol, as noted by the Examiner, but stearyl alcohol is not encompassed by the instant nonionic surfactants, as discussed above. As recognized by the Examiner, Guerrero fails to teach the use of a nonionic surfactant.

According to the Examiner, it would have been obvious to further add a nonionic surfactant to Guerrero's composition, in amounts taught by Amalric, because the ordinary artisan would have had a reasonable expectation of success in improving beneficial characteristics of his compositions such as skin tolerance and plasticity.

The applicants disagree, for the following several reasons. First, the aim of Guerrero is to obtain a *clear gel*; see abstract and column 2, line 16. On the contrary, one of the main uses of the concentrates of Amalric is that of pearling agent, i.e. an agent having an opacifying effect; see Amalric, column 3, lines 38-40. This clearly shows that the combination of Guerrero and Amalric is *improper*. Second, Guerrero says that the anionic sulfosuccinate surfactant is an important component of his composition; see Amalric, column 3, lines 49-51. Accordingly, a skilled artisan would not be induced to replace the anionic sulfosuccinate by a nonionic surfactant. Third, Amalric recommends the use of anionic surfactants; see column 4, lines 13-20. Accordingly, were the combination of Amalric and Guerrero proper, such a combination could not have led the ordinarily skilled artisan to use a nonionic surfactant for the reason that the composition of Guerrero *already contains an anionic surfactant, as recommended by Amalric*, and the ordinarily skilled artisan would have had thus no

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motivation for adding a further, nonionic, surfactant. Moreover, the ordinarily skilled artisan would not have been motivated to use the concentrates (containing nonionic surfactant) of Amalric, since the purpose of Guerrero is to obtain clear gels, while the main use of the concentrates of Amalric is the use as pearling agent, as noted above.

Finally, the combination of Guerrero and Amalric, were it proper, would certainly not suggest the use of a nonionic surfactant as *sole surfactant*, as presently claimed.

Withdrawal of the Section 103 rejection of claims 15-28 over Guerrero in view of Amalric is requested.

In view of the above, the claims are submitted to be in condition for allowance and a Notice to that effect is requested.

Respectfully submitted,

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**MARKED UP CLAIM**

15. (Amended) Cosmetic or dermatological composition for topical application in the form of an aqueous gel, comprising:

- (a) at least one associative non-crosslinked acrylic copolymer having a C<sub>8</sub>-C<sub>32</sub> hydrophobic chain, and being present in a proportion of 0.8 to 20% by weight with respect to the total weight of the composition,
- (b) as the sole surfactant of said composition, at least one non-ionic surface-active agent, in a ratio of 1/20 to 1/5 with respect to the associative non-crosslinked copolymer but in a proportion of less than 1% by weight with respect to the total weight of the composition, and
- (c) at least one insoluble conditioning agent selected from the group consisting of a silicone, a hydrocarbon, a fatty alcohol and a fatty ester, said conditioning agent being present in a proportion of 0.01 to 20% by weight with respect to the total weight of the composition.